



City of Salinas

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CITY OF SAN JOSE
DEVELOPMENT SERVICES

June 29, 2007

VIA E-MAIL AND U.S. MAIL

Joseph Horwedel
Director of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

Re: Coyote Valley Specific Plan - Draft Environmental Impact Report

Dear Mr. Horwedel:

We have recently learned that the City of San Jose is circulating a draft environmental impact report (EIR) for the Coyote Valley Specific Plan (Specific Plan). We appreciate the opportunity to submit these comments and offer them in a spirit of regional cooperation.

The purpose of this letter is three-fold. First, we would like to request that in the future, the City of Salinas be provided formal notice of the availability of significant regional planning documents, such as the draft EIR, and ask that going forward, you notify the City of Salinas of all future actions related to the Specific Plan. Such open communications will go a long way toward maintaining amicable working relationships between our sister jurisdictions. Second, we would like to remind the City of San Jose of its obligations under a settlement agreement for the Coyote Valley Research Park Project (Research Park Project), which is an existing entitlement within the Specific Plan Area. Third, we would like to offer a few broad comments on the Specific Plan EIR itself.

Obligations Under the Research Park Project Settlement Agreement

The City of Salinas has long been concerned about the environmental impacts of extensive development in the Coyote Valley, and has been particularly concerned about significant and unavoidable impacts that could potentially be externalized to the region. For this very reason, back in 2000, the City of Salinas and the City of San Jose disagreed over San Jose's approval of the Coyote Valley Research Park, with its significant regional traffic and air quality impacts. Happily, that dispute was amicably resolved through a settlement agreement designed to address the project's regional transportation impacts. Generally speaking, the settlement agreement provided for efforts to expand regional transportation options as well as for housing opportunities in the Research Project area in order to encourage a more balanced housing and

jobs ratio, with the intent of reducing commuter traffic both from San Jose and from communities to the south of the project site.

Although the lack of action on the Research Park Project had led some to believe it had been abandoned, we understand from the Specific Plan EIR that the Research Park Project has not been abandoned, that certain prerequisite flood control activities are underway, and that federal permits have been obtained. (See EIR, p. 105.)

That said, we would like to remind San Jose of its and the project applicants' obligations under the Settlement Agreement.

- Regional Transportation. Section 3 of the settlement agreement provides for various activities to expand regional transportation options. Under section 3.1, the project applicant agreed to pay a consultant to study regional transportation issues for a period of two years, beginning 60 days after the first commercial building permit is issued. Section 3.2 relates to the use of the transportation study prepared under section 3.1. Under section 3.3, the City of San Jose agreed to consider for endorsement any proposal presented by Salinas to expand Caltrain service to Salinas. As you know, limited Caltrain service has been extended to Salinas; it will be interesting to see if the regional transportation study recommends further expansion of that service.
- Networking Academies. Under section 4, the project applicant agreed to encourage and fund networking academy programs. These payments are due within sixty days after the issuance of the first commercial building permit.
- Monterey County Affordable Housing Trust. The Research Park Project applicant agreed to contribute \$1,000,000 on a matching fund basis to an affordable housing trust in Monterey County similar to the Silicon Valley Manufacturing Group's Housing Trust Fund. The City of Salinas has three years from the issuance of the first commercial building permit to obtain matching funds; once proof of those funds has been obtained, the applicant has 90 days to make the payment. If Salinas fails to garner matching funds of \$1,000,000, the applicant must pay matching funds of the amount garnered but in any event must pay at least \$500,000.

In order to assure that the public benefits from these settlement terms, Salinas would like to be provided notice from San Jose of any building permits that have been issued or are about to be issued for commercial buildings within the Research Park Project. We have attached a copy of the settlement agreement for your reference.

Comments on the EIR

Although we are concerned about all of the project's impacts, particularly regional impacts, we focus our comments on two areas of particular interest: Regional Transportation and Housing Impacts.

- Scope of Study: Page 123: "Due to the scale of the" Specific Plan, "facilities outside of the City of San Jose would be affected by the project." The EIR explains what facilities were studied, but we cannot locate an explanation of how those facilities were chosen for study and why other facilities were not also studied. For instance, south of San Jose, transportation facilities in Morgan Hill, Gilroy, and San Martin were analyzed, and in fact impacts in each of those cities were found. Did the City analyze transportation impacts south of Gilroy to confirm that no impacts would in fact occur? If not, is there an explanation for this limited area of study?
- Phasing Impacts: Page 147: According to the EIR, modeling for the project assumes that about 40% of the trips would be internal to the Specific Plan area. Presumably, this assumption is based on the ultimate jobs and housing balance envisioned by the Specific Plan. The EIR's assumptions about trip distribution are also based on this jobs/housing balance, it appears. (See EIR, p. 148.) Here is our concern. The project's phasing is unknown because of several impediments to build out, including water supply issues. What happens if the housing components of the project are not built out? The EIR discusses the potential phasing impacts if development precedes transportation infrastructure improvements at section 4.2.2.12, but we were unable to locate an analysis of phasing impacts if jobs precede housing in significant numbers by a significant amount of time. This possibility should be grappled with, and mitigation should be developed to preclude such a possibility. (The EIR does include a discussion of "Partial CVSP Conditions" but that analysis assumes a jobs/housing balance in the partial build out scenario. (See EIR, p. 167.))

These concerns are in line with those articulated to the City of San Jose in the past, and are consistent with the substance of the settlement agreement described above and attached to this document. We hope that you will give these concerns the time and consideration they deserve.

Thank you for your consideration. We look forward to future communications with San Jose on these matters and our continued collaboration on matters of mutual regional interest.

Sincerely,



Vanessa W. Vallarta
City Attorney

cc: Mayor Dennis Donohue and Members of the Salinas City Council
Mayor Chuck Reed and Members of the San Jose City Council
Richard Doyle, City Attorney, City of San Jose
Dave Mora, City Manager, City of Salinas
Jared Hart, City of San Jose
Laurel Prevetti, Deputy Director, City of San Jose

Attachment: Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made effective as of this 11th day of September 2001 ("Effective Date"), by and between the City of San Jose ("San Jose"), the City of Salinas ("Salinas") and Coyote Valley Research Park LLC ("CVRP"). Salinas, San Jose and CVRP are referred to collectively herein as the "Parties" and each individually as a "Party".

RECITALS

A. WHEREAS, on or about October 24, 2000 and November 7, 2000, the City Council of San Jose considered and approved various land use entitlements relating to Coyote Valley Research Park. Pursuant to such project approvals, Coyote Valley Research Park anticipates the development of an approximately 688-gross acre site with approximately 385 net acres of office/research and development/assembly and light manufacturing uses. Construction of building space would total up to 6.6 million square feet. Specifically, the City Council of San Jose made the following determinations: (1) the project will have a significant effect on the environment, (2) an environmental impact report was prepared and certified for the project pursuant to the provisions of the California Environmental Quality Act, California Public Resources Code §21000 et. seq. ("CEQA"), (3) mitigation measures were made a condition of approval of the project, and (4) a statement of overriding considerations was adopted for the project.

B. WHEREAS, on or about November 27, 2000, Salinas filed an action relating to the project pursuant to the California Environmental Quality Act, Public Resources Code § 21000 et seq., encaptioned *City of Salinas v. City of San Jose, City Council of San Jose, et al.*, Santa Clara County Superior Court No. CV794212b (the "Litigation").

C. WHEREAS, the Mayor's Housing Production Team of San Jose has recommended a range of actions designed to lead to the creation of new housing units, which have been reviewed by and approved by the City Council of San Jose.

D. WHEREAS, San Jose has initiated proceedings to accelerate the preparation of a Specific Plan for the Central Coyote Urban Reserve which would mandate that twenty percent of all units be deed-restricted below market rate units.

E. WHEREAS, Cisco Systems, Inc. ("Cisco"), a member of CVRP, operates the Cisco Networking Academy Program, a partnership between Cisco, education, business, government and community organizations, to provide internet technology skill.

F. WHEREAS, pursuant to the provisions of CEQA, Salinas, San Jose, and CVRP have been engaged in discussions in an effort to resolve the Litigation.

G. WHEREAS, as set forth more fully below, the Parties hereto desire to fully settle, compromise, and resolve the Litigation and any disputes and controversies relating to the CVRP Project (as defined in section 1.1 below). Following extensive settlement discussions and negotiations, the Parties have agreed to a settlement, the terms

and conditions of which are set forth below and constitute the mutual understanding of the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises, and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1. **CVRP Project.** The term "CVRP Project" shall mean that project: (a) described in the Draft Environmental Impact Report for Coyote Valley Research Park, dated February 2000 at pages 1 through 33, as amended by the First Amendment to the Draft Environmental Impact Report, the Additions to Coyote Valley Research Park Final Environmental Impact Report, and the Addendum to Coyote Valley Research Park Final Environmental Impact Report (collectively, the "CVRP Project EIR"); (b) as may be amended pursuant to the CVRP Project Approvals (defined in Section 1.3 below) and CVRP Subsequent Project Approvals (defined in Section 1.4 below); and/or (c) as may be amended pursuant to and/or consistent with the terms of this Agreement.

1.2. **Bailey Extension Project.** The term "Bailey Extension Project" shall mean the Bailey/U.S. 101 Interchange and grade separation project as generally described at pages 1 through 27, inclusive, in the U.S. 101/Bailey Avenue

Interchange, Monterey Road Bailey Avenue Interchange and Related Bridges and Overcrossings Draft Environmental Impact Report (September 1991) as modified by Final Environmental Impact Report for the Bailey Extension Project and the Addendum to the Final Environmental Impact Report for the Bailey Extension (February 1999) as may be amended by CVRP Project Approvals and CVRP Project Subsequent Approvals.

1.3. CVRP Project Approvals. The term "CVRP Project Approvals" shall mean the project approvals for the approval, permitting, entitlement, development and operation of the CVRP Project and the Bailey Extension Project, including without limitation: the CVRP Project EIR certified by San Jose on October 24, 2000; the Development Agreement ("DA") between San Jose and CVRP approved by San Jose on November 7, 2000 and executed by CVRP on December 7, 2000 and by San Jose on January 17, 2001; the amendments to the Master Development Plan for the North Coyote Valley Campus Industrial Area approved by San Jose on October 24, 2000; the rezoning of the CVRP Project site to (A)PD Planned Development Zoning District approved by San Jose on November 7, 2000 ("Rezoning"); the Mitigation Monitoring and Reporting Program ("MMRP") approved by San Jose on October 24, 2000 in connection with the CVRP Project; all approvals and agreements related to the Bailey Extension Project; all approvals related to the formation of the Community Facilities District No. 5; the Land Transfer and Maintenance Agreement approved by San Jose on October 24, 2000 and by the Santa Clara Valley Water District; the Master Cooperation Agreement between CVRP and San Jose approved by San Jose on October 24, 2000; the

North Coyote Valley Incentive Zone adopted by San Jose on November 7, 2000; all approvals listed on Exhibit C to the Master Cooperation Agreement; and the appropriations ordinance and funding sources resolution amendments in the Water Utility Fund, Water Utility Capital Fund, and Treatment Plan Connection Fee Fund adopted by San Jose on November 7, 2000.

1.4. CVRP Project Subsequent Approvals. The term "CVRP Project Subsequent Approvals" shall mean: (1) all resource agency permits and additional approvals for the CVRP Project and/or Bailey Extension Project, including, but not limited to, any permits and approvals issued by the United States Fish and Wildlife Service, National Marine Fisheries Service, United States Army Corps of Engineers, Department of Safety of Dams, State and Regional Water Quality Control Boards, the California Department of Fish and Game, and Santa Clara Valley Water District; (2) any and all permits, approvals and entitlements issued in furtherance of this Agreement, the Master Cooperation Agreement or the approvals listed on Exhibit C to the Master Cooperation Agreement; (3) any subsequent approvals, permits and entitlements for the CVRP Project and the Bailey Extension Project including without limitation, subdivision improvement plans, final maps, tentative maps, building permits, construction agreements, planned development permits, grading permits, certificates of occupancy and all approvals listed on Exhibit D to the Master Cooperation Agreement; and (4) any amendments or modifications to any of the CVRP Project Approvals, and/or any of the

foregoing approvals, permits, entitlements, plans, maps, permits, agreements or certificates, consistent with the terms of this Agreement.

1.5. Salinas. The term "Salinas" shall mean the City of Salinas and its elected and appointed officials.

1.6. Hinder the CVRP Project. The phrase "hinder the CVRP Project" shall mean to directly or indirectly: (a) impair the development or use of the CVRP Project and/or the Bailey Extension Project as set forth in the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements (as defined in Section 1.9); (b) delay, change the process for issuance of, or otherwise interfere with, any CVRP Project Approvals, CVRP Project Subsequent Approvals or the Housing Site Entitlements (as defined in Section 1.9); or (c) increase the cost of processing, development, construction, ownership, occupancy, or operation, or adversely affect the timing of the development, occupancy and/or build-out, of the CVRP Project or the Bailey Extension Project.

1.7. Effective Date. This Agreement shall be effective as of the date when all of the following conditions have occurred: (a) Salinas' City Council has ratified and approved the terms of this Agreement; (b) San Jose's City Council has ratified and approved the terms of this Agreement; and (c) all of the signatories for all Parties as set forth below have signed the Agreement. Notwithstanding the foregoing, this Agreement shall not be effective unless all of the conditions set forth in this Section 1.7(a)-1.7(c), inclusive, have occurred on or before September 11, 2001.

1.8. Reserved Site. The term "Reserved Site" shall mean that a site consisting of between fifty (50) and seventy-five (75) acres located within the CVRP Project Site as selected by CVRP in its sole and absolute discretion.

1.9. Housing Site Entitlements. The term "Housing Site Entitlements" shall mean the General Plan Amendment and PD Zoning permitting residential use of a site in the vicinity of the CVRP Project as set forth more particularly in Section 2.2.1 of this Agreement and any subsequent PD Permits, subdivision improvement plans, final maps, tentative maps, building permits, condominium plans, grading permits, resource agency permits and certificates of occupancy related to or in furtherance of the General Plan Amendment and PD Zoning.

1.10. First Commercial Building Permit. The term "First Commercial Building Permit" shall mean the building permit issued by San Jose pursuant for the construction of a commercial building for the initial phase of the CVRP Project. The phrase "commercial building" shall mean any structure more than 50 percent of which is classified in the 1997 Uniform Building Code or 1998 California Building Code as Occupancy Group B (Business), Occupancy Group F (Factory and Industrial), Occupancy Group S-1 and S-2 (Storage), or Occupancy Group H-6 and H-7 (low grade Hazardous). Notwithstanding the foregoing, the phrase "commercial building" shall not include any fire station and/or infrastructure improvements to be constructed in connection with the CVRP Project.

2. LIMITATION ON DEVELOPMENT OF CVRP PROJECT.

2.1. Selection of Reserved Site. CVRP shall select and designate the Reserved Site within 180 days of the Effective Date of this Agreement.

2.2. Limitation. CVRP shall take no action to (a) develop more than five (5) million square feet of campus industrial development within the CVRP Project as set forth in to CVRP Project Approvals and CVRP Project Subsequent Approvals; or (b) use the Reserved Site for campus industrial development until such time as any one (1) of the following events occurs:

2.2.1. Approval of Entitlements Permitting Residential Use in Vicinity of Project. San Jose approves a General Plan Amendment and PD zoning permitting residential use of a site within the vicinity of the CVRP Project. The General Plan designation in the General Plan Amendment for such site shall be twenty-five (25) to forty (40) dwelling units per acre and shall permit the construction and development of approximately 2,000 to 3,000 dwelling units. The PD Zoning for such site shall be for the lesser of 2,000 to 3,000 dwelling units or the maximum number of dwelling units permitted by the General Plan Amendment if and as approved by San Jose and shall provide that twenty percent (20%) of the housing units shall be made affordable as determined by San Jose. Notwithstanding the foregoing, the agreements set forth in this Section 2.2.1 shall not commit San Jose to any particular course of action with respect to the approval of the General Plan Amendment or PD Zoning described above.

2.2.2. Commencement of Specific Plan Process for Central Coyote Urban Reserve. San Jose commences the process for preparing a Specific Plan permitting residential use in the Central Coyote Urban Reserve. Notwithstanding the foregoing, the agreements set forth in this Section 2.2.2 shall not commit San Jose to any particular course of action with respect to the Specific Plan for the Central Coyote Urban Reserve.

2.2.3. Issuance of Building Permits. San Jose issues building permits for 2000 housing units that are (a) within a ten-mile radius of the CVRP Project and (b) in addition to the housing sites identified in San Jose's General Plan as of October 24, 2000.

3. REGIONAL TRANSPORTATION.

3.1. Consulting Services. For a period of two (2) years ("Consultant Period"), CVRP shall pay for the services provided by a qualified consultant selected by Salinas to address regional transportation issues. Salinas shall be responsible for the development of the appropriate scope of work to be performed by the consultant. Notwithstanding the foregoing, CVRP shall not be obligated to expend funds in excess of Two Hundred Fifty Thousand and No/100 dollars (\$250,000.00) in retaining and paying the consultant pursuant to this Section 3.1. The Consultant Period shall begin to run sixty (60) days after issuance of the First Commercial Building Permit.

3.2. Consideration of Consultant Traffic Study. In the event that the consultant retained pursuant to Section 3.1 above prepares a regional traffic study and Salinas submits such study in connection with any project (as that term is defined in Section 21065 of the California Public Resources Code and Section 15378 of the CEQA Guidelines) under review by San Jose, San Jose shall consider and review the submitted regional traffic study in such manner as required by the California Environmental Quality Act, California Public Resources Code § 21000 et seq. Notwithstanding the foregoing, nothing in this Section 3.2 shall commit San Jose to any particular course of action with respect to its consideration of the regional traffic study or the project for which the regional traffic study has been submitted.

3.3. Endorsement of Caltrain Extension to Salinas. Upon presentation by Salinas to San Jose of a resolution from Transportation Authority of Monterey County endorsing the extension of Caltrain to Salinas, San Jose shall submit to the San Jose City Council, for its consideration, a resolution endorsing the extension of Caltrain to Salinas. San Jose staff shall recommend to the San Jose City Council that it adopt a resolution endorsing extension of Caltrain to Salinas. Notwithstanding the foregoing, nothing in this Section 3.3 shall commit the San Jose City Council to any particular course of action with respect to the endorsement of the extension of Caltrain to Salinas.

4. NETWORKING ACADEMIES.

4.1. Continued Support. Cisco, through the existing Cisco Networking Academy Program, shall continue to work with Salinas in connection with the continued development of local networking academies at Hartnell Community College and Mission Trails ROP with the goal of ensuring those local academies are operating at full capacity.

4.2. Contribution. CVRP shall contribute to Salinas the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) to defray the cost of training instructors at Hartnell Community College or Mission Trails ROP in connection with Cisco Networking Academy Program.

5. MONTEREY COUNTY AFFORDABLE HOUSING TRUST FUND.

5.1. Amount of CVRP Contribution. CVRP shall contribute on a matching fund basis the sum of One Million and No/100 Dollars (\$1,000,000.00) to an affordable housing trust fund established for Monterey County ("Monterey County Affordable Housing Trust Fund") that is similar to the Silicon Valley Manufacturing Group's Affordable Housing Trust Fund.

5.2. Time of Contribution. Salinas shall have a period of three (3) years ("Matching Period") to obtain nonrevocable matching contributions for the Monterey County Affordable Housing Trust Fund in the amount of One Million and No/100 Dollars (\$1,000,000) ("Matching Funds"). Within ninety (90) days of CVRP's

receipt of appropriate evidence that Salinas has obtained the Matching Funds, CVRP shall make the contribution identified in Section 5.1. The Matching Period shall commence to run at the issuance of the First Commercial Building Permit.

5.3. Inability to Obtain Matching Funds. If after the expiration of the Matching Period, Salinas has been unable to obtain the full amount of the Matching Funds, then, within ninety (90) days of CVRP's receipt of appropriate evidence that Salinas has obtained some amount of Matching Funds, CVRP shall make a portion of the contribution identified in Section 5.1 in an amount equal to the amount of Matching Funds obtained by Salinas, provided however, that in no event shall the contribution made by CVRP be less than the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00). CVRP's obligation to provide Matching Funds shall terminate at the expiration of the Matching Period regardless of whether Salinas obtains additional Matching Funds after the expiration of the Matching Period.

5.4. Technical Assistance. San Jose and CVRP shall use their best efforts to cause the Silicon Valley Manufacturing Group to provide technical assistance to Salinas with respect to the formation of the Affordable Housing Trust Fund.

6. **DISMISSAL OF LITIGATION.** Within five (5) business days of the Effective Date of this Agreement, Salinas shall dismiss the Litigation with prejudice and shall notify the Court that it is withdrawing any and all papers filed by Salinas in connection with the Litigation.

7. **SETTLEMENT WITH COUNTY OF SANTA CRUZ.** If the total amount of monetary contributions being provided to the County of Santa Cruz by CVRP in connection with the settlement of the litigation encaptioned *County of Santa Cruz v. City of San Jose, City Council of the City of San Jose*, Santa Clara County Superior Court No. CV 794209 (the "Santa Cruz Litigation") is greater than the total amount of monetary contributions being provided by CVRP to Salinas pursuant to Sections 3.1, 4.2 and 5.1 of this Agreement, then CVRP shall increase the amount of monetary contributions being provided to Salinas pursuant to this Agreement so that the total amount of monetary contributions being provided to Salinas pursuant to this Agreement is equal to the total amount of the monetary contributions being provided to the County of Santa Cruz in connection with the settlement of the Santa Cruz Litigation.

8. **PAYMENT.** CVRP shall not be obligated to make any of the monetary contributions set forth above in Sections 3.1, 4.2, 5.1 and 7 of this Agreement until the issuance of the First Commercial Building Permit. Upon issuance of the First Commercial Building Permit, then CVRP shall make the contributions to Salinas required by Sections 3.1, 4.2, 5.1 and 7 as follows:

8.1.1. Consultant Services Contribution. Salinas shall be entitled to select the consultant retained pursuant to Section 3.1 within sixty (60) days after issuance of the First Commercial Building Permit upon such terms and conditions as are consistent with Section 3.1. Salinas shall forward the consultant's invoices for the

services rendered on a monthly basis and CVRP shall pay these invoices within thirty (30) days of receipt consistent with the terms of Section 3.1.

8.1.2. Network Academy Contribution. CVRP shall make the contribution to Salinas set forth in Section 4.2 of this Agreement within sixty (60) days after issuance of the First Commercial Building Permit.

8.1.3. Affordable Housing Trust Fund. Contribution. CVRP shall make the contribution set forth in Section 5.1 of this Agreement to the Monterey County Affordable Housing Trust Fund as is consistent with the terms of Sections 5.2 and 5.3, inclusive, of this Agreement.

8.1.4. Additional Consideration. CVRP shall make any additional contribution required by Section 7 of this Agreement within sixty (60) days of after the later to occur of (a) the issuance of the First Commercial Building Permit or (b) the execution of a written amendment to this Agreement identifying the type, nature and amount of any such additional contribution.

9. FUTURE CHALLENGES.

9.1. Restricted Activity Relating to CVRP Project and Bailey Extension Project. Except for the obligations set forth herein, Salinas agrees and covenants that it shall not itself, nor counsel others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate in (i) any administrative hearing, litigation or other action related in any way to any aspect of the approval, permitting, entitlement, development, construction or operation of the CVRP Project, the Bailey Extension

Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals, the Housing Site Entitlements, or otherwise hinder the CVRP Project, (ii) any legislation, initiative, referendum or moratorium which would in any way hinder the CVRP Project and/or affect, in any way, the approval, permitting, entitlement, development, construction, occupancy or operation of the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals; or the Housing Site Entitlements or (iv) any community meetings, proceedings or other events which have as a topic any form of opposition to the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals, or Housing Site Entitlements.

9.2. No Comments. Without the express written consent of San Jose and CVRP, Salinas shall not submit formal or informal, prepared or unprepared, oral or written comments, or testify in front of, or aid, encourage, assist or collaborate with (monetarily or otherwise) any other party in submitting oral or written comments to or testifying in front of, (i) any reviewing authority or agency, or (ii) any media entity or representative thereof, with respect to the CVRP Project, the Bailey Extension Project, or any of the CVRP Project Approvals, CVRP Project Subsequent Approvals or Housing Site Entitlements.

9.3. Release Relating to CVRP Project and Bailey Extension Project. Except for the obligations provided herein, Salinas hereby unconditionally releases, remises, acquits and forever discharges CVRP and San Jose, and each of their

respective representatives, attorneys, employees, agents, heirs, officers, directors, successors and assigns, members, affiliates, partners, joint venturers, subsidiaries, parents, receivers, trustees and shareholders (collectively, "Released Parties") from claims or causes of action, including any and all administrative or judicial hearings or appeals, or any other litigation in a court of law, either at law or in equity, of any kind, nature and description, presently known or unknown and whether presently existent or nonexistent, or any legislation, initiative, referendum or moratorium, that would hinder the CVRP Project and/or affect, in any way, the approval, permitting, entitlement, development, occupancy or operation of the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals or Housing Site Entitlements which Salinas has had, now has or may have in the future against San Jose or CVRP or their respective Released Parties.

9.4. Waiver of California Civil Code Section 1542. Salinas agrees that the release contained in Section 9.3 extends to all claims of any kind or nature, whether known or unknown, suspected or unsuspected, and in that regard Salinas acknowledges that it has read, been advised by counsel concerning, and considered and understand the full nature, extent and import of the provisions of Section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Salinas further declares that it knowingly and willingly enters into this Agreement notwithstanding the provisions of Section 1542 of the Civil Code of California. Salinas, upon the advice of counsel, waives and relinquishes, now and forever, any and all rights that it now has or may have in the future under Section 1542 to the fullest extent allowed by law. Salinas agrees and represents that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of action or liabilities, known or unknown, heretofore and hereafter arising in connection with the subject matter of this Agreement.

City of Salinas Initials

others supporting the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements. If requested by CVRP or San Jose, Salinas shall provide a draft of any written comments supporting the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements to CVRP and San Jose for their respective review and comment prior to Salinas' submission of said comments. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. ASSISTANCE WITH SETTLEMENT OF AMBAG

LITIGATION. Salinas shall use its best efforts to cause the AMBAG to enter into a settlement of the AMBAG Litigation on terms that are acceptable to San Jose and CVRP, in their respective sole and absolute discretion.

12. REMEDIES.

12.1. Available Remedies in the Event of Breach. The Parties agree that, in the event of a default under this Agreement by any Party, the sole and exclusive remedies available to the other Parties shall be (a) to enforce by specific performance the obligations hereunder of the defaulting Party or (b) to exercise any other remedies specifically set forth herein. No Party shall be required or compelled to take any action, or refrain from taking any action, other than those actions expressly identified in this Agreement.

12.2. Remedies of San Jose and CVRP in the Event of Breach by Salinas.

12.3. Termination of Obligations. Salinas' breach of the obligations set forth in this Agreement shall terminate San Jose's and CVRP's obligations as set forth in this Agreement.

12.4. Corrective Actions Related to Petitioners' Breach of Section 9.2. In the event of Salinas' breach of the obligations set forth in Section 9.2, Salinas shall within five (5) business days of its receipt of notice from San Jose and/or CVRP that Salinas has breached Section 9.2: (a) unqualifiedly withdraw in writing, with a copy to CVRP and San Jose, any comments submitted to any person or entity in violation of this Agreement; and/or (b) if the nature or the forum of the comments submitted in violation of this Agreement are such that they cannot be withdrawn, submit to the same person or entity, written comments, with a copy to CVRP and San Jose, the content of which refute the contents of the comments that violated this Agreement. CVRP and San Jose shall have the right to submit copies of such withdrawals/counter comments to the media, public officials or any other person or entity deemed by CVRP and San Jose, in their respective sole and absolute discretion, to be necessary to mitigate the damage caused by the breach.

12.5. Survival of Releases. Sections 9.1 through 9.4, inclusive, shall survive the expiration or earlier termination of this Agreement.

12.6. Enforcement Procedure. As set forth in the Final Order of the Superior Court of the State of California In and For the County of Santa Clara ("Court") set forth in Exhibit A attached hereto, it is the intent of the Parties that the Court in the Litigation retain jurisdiction for the sole purpose of resolving any disputes between the Parties as to the enforcement or interpretation of this Agreement and such continuing jurisdiction shall not include any other matters. Any dispute regarding the enforcement or interpretation of this Agreement shall occur pursuant to the following procedure:

12.6.1. Notice of Breach. Within ten (10) business days of its determination that another Party has breached the provisions of this Agreement, a Party shall notify all other Parties and their counsel of this determination in writing and provide a written explanation of the basis of its determination.

12.6.2. Response to Notice of Breach. Within ten (10) business days of their receipt of the notice set forth in Section 12.6.1, the Parties receiving said notice shall provide a written response to the notifying Party indicating its concurrence with, or rejection of, the determination of breach, or indicating that the alleged breach has no bearing on that Party's obligations under this Agreement, as the case may be.

12.6.3. Meet and Confer Obligation. Should the Parties disagree with respect to the determination of breach of this Agreement, or the remedy necessary to cure any alleged breach, then within fifteen (15) days of the receipt by the

Party claiming the breach of all responses by the other Parties, or other mutually agreeable date, the Parties shall meet and confer in good faith in an attempt to resolve any differences.

12.6.4. Court Resolution of Breaches. In the event that the dispute is not resolved, then the Party claiming the breach shall be entitled immediately to seek relief exclusively from the Superior Court in the County of Santa Clara. Any action taken to resolve a dispute between the Parties with respect to the enforcement or interpretation of this Agreement shall be taken by motion or other appropriate pleading. The Court's power to remedy any breach of this Agreement shall be expressly governed and limited by Section 12.1 of this Agreement.

13. MISCELLANEOUS PROVISIONS.

13.1. No Prior Assignments. The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, firm or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

13.2. Binding on Successors. This Agreement and its terms shall inure to the benefit of and be binding upon each of the Parties hereto and each and all of their respective successors, assignees, buyers, grantees, vendees, or transferees, and their past or present, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, representatives, receivers, trustees, officers, directors, employees, agents, shareholders

and elected and appointed officials and each of them, as though they were Parties hereto, wherever located. Salinas shall not have the right to transfer or assign any rights or obligations under this Agreement, voluntarily, involuntarily, or by operation of law without the express written consent of CVRP and San Jose, which may be withheld in CVRP's and San Jose's respective sole and absolute discretion.

13.3. Settlement of Disputed Claims. The Parties hereto understand and agree that this settlement is a compromise of disputed claims, and that no Party's actions under this Agreement shall be construed as an admission of liability with respect to Litigation.

13.4. Entire Agreement. This writing constitutes the entire agreement among the Parties, and no modification of this Agreement shall be valid unless executed in writing by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

13.5. Factual Investigation. Each Party has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know

or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement.

13.6. Agreement May Be Pleaded as a Defense. In connection with any demand or cause of action related to a matter released in Sections 10.1 through 10.5, inclusive, this Agreement may be pleaded as a defense by the Parties hereto and shall operate to effect a dismissal of such demand or cause of action.

13.7. Captions. The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

13.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.9. Severability. If any terms or provisions of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or unenforceability would deprive any Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the Parties shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually

acceptable to the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void, or unenforceable, the Party disadvantaged by the invalidation or voiding of this Agreement may terminate this Agreement by providing written notice of such termination to the other Parties.

13.10. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between the Parties shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of the Parties indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 13.10.

San Jose: Darrell Dearborn
City Manager's Office
801 N. First St., Room 436
San Jose, CA 95110
Facsimile: (408) 277-3131

With copies to: Richard Doyle
City Attorney
City of San Jose
151 Mission Street
San Jose, California 95110
Facsimile: (408) 277-3159

CVRP: Mr. David Taran
Mr. Stuart Shiff
Coyote Valley Research Park, LLC
150 Almaden Blvd.
Suite 700
San Jose, California 95113
Facsimile: (408) 293-9600

With copies to: Ellen Jamason
Senior Director, Real Estate & Facilities
Cisco Systems, Inc.
170 West Tasman Drive
Building 8
San Jose, CA 95134-1706
Facsimile: (408) 526-4830

Mr. Stephen G. Speno
President
Gibson Speno Companies
60 S. Market Street, Suite 1120
San Jose, CA 95113
Facsimile: (408) 278-6868

Margo N. Bradish, Esq.
Brobeck, Phleger & Harrison LLP
One Market
Spear Tower
San Francisco, CA 94105
Facsimile: (415) 442-1010

Salinas: David Mora
City Manager's Office
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639
Facsimile: (831) 758-7256

With copies to:

James C. Sanchez
Salinas City Attorney's Office
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639
Facsimile: (831) 758-7256

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent, or (b) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by nationally recognized overnight courier service (such as Federal Express) as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a "hard" copy is delivered by overnight courier as provided above.

13.11. Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same

agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

13.12. Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

13.13. Authority. The persons signing below represent that they have the authority to bind their respective Party and that all necessary board of directors', shareholders' or City Council's or other approvals have been obtained.

13.14. Understanding of Terms. The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants, as they may have desired prior to executing this Agreement.

13.15. Construction. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the

effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

13.16. Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set forth herein in full.

13.17. No Third Party Beneficiaries. The Parties agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

13.18. No Requirement to Build. The Parties hereto agree that, notwithstanding anything to the contrary herein, this Agreement shall not obligate CVRP or San Jose to undertake all or any part of the CVRP Project or the Bailey Extension Project.

13.19. No Further Payments. No Party hereto shall be required to pay, or be responsible for the payment of, any sum, cost or expense, except as expressly provided by this Agreement.

13.20. Further Assurances. The Parties shall promptly perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all acts, deeds and assurances, including the delivery of any documents, as either Party may reasonably require in order to carry out the intent and purpose of this Agreement.

13.21. Termination. If CVRP, in its sole and absolute discretion, notifies the other Parties, in writing, (a) that any CVRP Project Approval or CVRP Project Subsequent Project Approval is disapproved or is approved on terms not

acceptable to CVRP in its sole and absolute discretion, or (b) that CVRP has decided not to commence construction of any new buildings in the CVRP Project, or (c) that any CVRP Project Approval or CVRP Project Subsequent Approval has been suspended, stayed, restrained, invalidated or voided as a result of any litigation, legislation, referendum or other reason, then this Agreement shall automatically terminate as of the date of such notice.

13.22. Announcement of Settlement. The Parties hereto shall work in good faith and cooperatively to announce the execution of this Settlement Agreement at a press conference or other public forum at the time of execution of the Agreement. In such announcement, the Parties hereto shall commend one another for their respective leadership and commitment to forging a regional collaborative for smart growth regional planning in San Jose and the adjoining communities including Salinas. Salinas shall state its support for the CVRP Project and Bailey Extension Project.

IN WITNESS WHEREOF, the Parties hereto have executed one or more
copies of this Agreement as of the date first set forth above.

Date: ~~August~~ __, 2001
September

**COYOTE VALLEY RESEARCH
PARK, LLC,**
a Delaware limited liability company

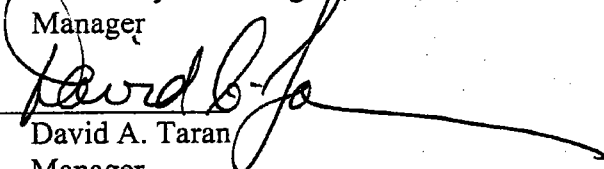
By: Coyote Valley Properties, LLC,
a Delaware limited liability
company

Its: Manager

By: Coyote Valley Managers, LLC, a
Delaware corporation

Its: Manager

By: Divco Coyote Managers, LLC,
Its: Manager

By: 
David A. Taran
Manager

Date: August __, 2001

CITY OF SAN JOSE

By: Ron Gonzales

Name: Ron Gonzales

Title: Mayor

~~August~~
Date: September 28, 2001

CITY OF SALINAS

By: Anna M. Caballero

Name: Anna Caballero

Title: Mayor

APPROVED AS TO FORM:

Dated: August __, 2001

BROBECK, PHLEGER & HARRISON
LLP

By: Rollin B. Chippey, II
Rollin B. Chippey, II

Attorneys for COYOTE VALLEY
RESEARCH PARK, LLC

Dated: ~~August~~ __, 2001

Sept - 13

OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SAN JOSE

By: Joseph DiCiuccio
Joseph DiCiuccio

Attorneys for CITY OF SAN JOSE

Dated: ~~August~~ ^{September} 28, 2001

OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SALINAS

By: 

James C. Sanchez

Attorneys for CITY OF SALINAS

EXHIBIT A

FINAL ORDER OF COURT

ROLLIN B. CHIPPEY State Bar No.: 107941
BROBECK, PHLEGER & HARRISON LLP
Spear Street Tower
One Market
San Francisco, California 94105
Telephone: (415) 442-0900
Facsimile: (415) 442-1010

Attorneys for Real Parties In Interest
COYOTE VALLEY RESEARCH PARK, LLC;
GIBSON SPENO, LLC; DIVCOWEST PROPERTIES, LLC;
CISCO SYSTEMS, INC.; and ROBERT WEYHE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CITY OF SALINAS, a charter city,

Petitioner and Plaintiff,

v.

CITY OF SAN JOSE, a charter city, CITY
COUNCIL OF THE CITY OF SAN JOSE,
the governing body of the City of San Jose,
and DOES I through X, inclusive,

COYOTE VALLEY RESEARCH PARK,
LLC; GIBSON SPENO, LLC; DIVCOWEST
PROPERTIES, LLC; CISCO SYSTEMS,
INC., ROBERT WEYHE, and DOES I
through 50, inclusive,,

Real Parties in Interest,

Case No. CV 794212

**STIPULATED JUDGMENT
ENTERED PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 664.6**

Action Filed: November 28, 2000
Trial Date: Not Yet Established

Plaintiff and Petitioner City of Salinas (hereinafter referred to as "Salinas"), Defendants and Respondents City of San Jose and City Council of City of San Jose (hereinafter referred to as "San Jose"), and Real Parties in Interest Coyote Valley Research Park LLC, Cisco Systems, Inc., DivcoWest Properties, Gibson Speno LLC, and Robert Weyhe (hereinafter referred to as "CVRP"), (collectively, the "Parties"), through their counsel of record, hereby agree and stipulate as follows:

FACTUAL BACKGROUND

H. WHEREAS, on or about October 24, 2000 and November 7, 2000, City Council of San Jose considered and approved land use entitlements relating to Coyote Valley Research Park. Pursuant to such project approvals, Coyote Valley Research Park anticipates the development of an approximately 688-gross acre site with approximately 385 net acres of office/research and development/assembly and light manufacturing uses. Construction of building space would total up to 6.6 million square feet. Specifically, the City Council of San Jose made the following determinations: (1) the project will have a significant effect on the environment, (2) an environmental impact report was prepared and certified for the project pursuant to the provisions of the California Environmental Quality Act, California Public Resources Code §21000 et. seq. ("CEQA"), (3) mitigation measures were made a condition of approval of the project, and (4) a statement of overriding considerations was adopted for the project. On the same date, the City Council of San Jose approved various infrastructure agreements with the CVRP.

- I. WHEREAS, on or about November 27, 2000, Salinas commenced the above-captioned action relating to the project pursuant to the California Environmental Quality Act, Public Resources Code § 21000 et seq. (the "Litigation").
- J. By way of summary, the Litigation seek a writ of mandate pursuant to California Code of Civil Procedure ("C.C.P.") §§1085 and 1094.5, and for declaratory and injunctive relief pursuant to C.C.P. §§526, 527 and 1060 and Civil Code §3422, setting aside land use approvals issued by San Jose allowing development of the Project.
- K. WHEREAS, pursuant to the provisions of CEQA, Salinas, San Jose, and CVRP have been engaged in discussions in an effort to resolve the Litigation.
- L. WHEREAS, as set forth more fully below, the Parties hereto desire to fully settle, compromise, and resolve the Litigation and any disputes and controversies relating to the CVRP Project Following extensive settlement discussions and negotiations, the Parties have agreed to a settlement, the terms and conditions of which are set forth in Exhibit A hereto and which constitute the mutual understandings of the Parties.
- M. WHEREAS Salinas, San Jose and CVRP have each consulted with legal counsel regarding this Stipulated Judgment set forth herein and are fully aware of its legal effect.

STIPULATION

Salinas, San Jose and CVRP, through their counsel of record, agree and stipulate as follows:

1. Pursuant to section 664.6 of the California Code of Civil Procedure, the above-captioned matter shall be and is hereby dismissed with prejudice.
2. Pursuant to section 664.6 of the California Code of Civil Procedure, Salinas, San Jose and CVRP hereby request that the Court retain jurisdiction over Salinas, San Jose and CVRP to enforce the terms of the Settlement Agreement until performance in full of all terms of the Settlement Agreement has been completed. Salinas, San-Jose and CVRP consent to the Court's retention of jurisdiction to enforce the terms of the Settlement Agreement.
3. Salinas, San Jose and CVRP shall each bear their own costs.

Dated: September 13, 2001


BROBECK, PHLEGER & HARRISON
LLP

By: _____
Rollin B. Chippey, II

Attorneys for Real Parties in Interest
COYOTE VALLEY RESEARCH PARK,
LLC, CISCO SYSTEMS, INC.,
DIVCOWEST PROPERTIES, GIBSON
SPENO LLC and ROBERT WEYHE

Dated: September 13, 2001

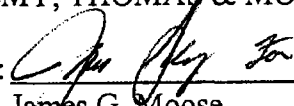
OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SAN JOSE

By: 
Joseph DiCiuccio

Attorneys for Respondents CITY OF SAN
JOSE and CITY COUNCIL OF CITY OF
SAN JOSE

~~October 1~~
Dated: ~~September~~ 13, 2001

REMY, THOMAS & MOOSE, LLP

By: 
James G. Moose

Attorneys for Petitioner CITY OF
SALINAS

ORDER

The above provisions and stipulations are hereby adopted as an Order of this Court

DATED: September __ 2001

Leslie C. Nichols
Judge of the Superior Court

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made effective as of this 11th day of September 2001 ("Effective Date"), by and between the City of San Jose ("San Jose"), the City of Salinas ("Salinas") and Coyote Valley Research Park LLC ("CVRP"). Salinas, San Jose and CVRP are referred to collectively herein as the "Parties" and each individually as a "Party".

RECITALS

A. WHEREAS, on or about October 24, 2000 and November 7, 2000, the City Council of San Jose considered and approved various land use entitlements relating to Coyote Valley Research Park. Pursuant to such project approvals, Coyote Valley Research Park anticipates the development of an approximately 688-gross acre site with approximately 385 net acres of office/research and development/assembly and light manufacturing uses. Construction of building space would total up to 6.6 million square feet. Specifically, the City Council of San Jose made the following determinations: (1) the project will have a significant effect on the environment, (2) an environmental impact report was prepared and certified for the project pursuant to the provisions of the California Environmental Quality Act, California Public Resources Code §21000 et. seq. ("CEQA"), (3) mitigation measures were made a condition of approval of the project, and (4) a statement of overriding considerations was adopted for the project.

B. WHEREAS, on or about November 27, 2000, Salinas filed an action relating to the project pursuant to the California Environmental Quality Act, Public Resources Code § 21000 et seq., encaptioned *City of Salinas v. City of San Jose, City Council of San Jose, et al.*, Santa Clara County Superior Court No. CV794212b (the "Litigation").

C. WHEREAS, the Mayor's Housing Production Team of San Jose has recommended a range of actions designed to lead to the creation of new housing units, which have been reviewed by and approved by the City Council of San Jose.

D. WHEREAS, San Jose has initiated proceedings to accelerate the preparation of a Specific Plan for the Central Coyote Urban Reserve which would mandate that twenty percent of all units be deed-restricted below market rate units.

E. WHEREAS, Cisco Systems, Inc. ("Cisco"), a member of CVRP, operates the Cisco Networking Academy Program, a partnership between Cisco, education, business, government and community organizations, to provide internet technology skill.

F. WHEREAS, pursuant to the provisions of CEQA, Salinas, San Jose, and CVRP have been engaged in discussions in an effort to resolve the Litigation.

G. WHEREAS, as set forth more fully below, the Parties hereto desire to fully settle, compromise, and resolve the Litigation and any disputes and controversies relating to the CVRP Project (as defined in section 1.1 below). Following extensive settlement discussions and negotiations, the Parties have agreed to a settlement, the terms

and conditions of which are set forth below and constitute the mutual understanding of the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises, and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1. CVRP Project. The term "CVRP Project" shall mean that project: (a) described in the Draft Environmental Impact Report for Coyote Valley Research Park, dated February 2000 at pages 1 through 33, as amended by the First Amendment to the Draft Environmental Impact Report, the Additions to Coyote Valley Research Park Final Environmental Impact Report, and the Addendum to Coyote Valley Research Park Final Environmental Impact Report (collectively, the "CVRP Project EIR"); (b) as may be amended pursuant to the CVRP Project Approvals (defined in Section 1.3 below) and CVRP Subsequent Project Approvals (defined in Section 1.4 below); and/or (c) as may be amended pursuant to and/or consistent with the terms of this Agreement.

1.2. Bailey Extension Project. The term "Bailey Extension Project" shall mean the Bailey/U.S. 101 Interchange and grade separation project as generally described at pages 1 through 27, inclusive, in the U.S. 101/Bailey Avenue

Interchange, Monterey Road Bailey Avenue Interchange and Related Bridges and Overcrossings Draft Environmental Impact Report (September 1991) as modified by Final Environmental Impact Report for the Bailey Extension Project and the Addendum to the Final Environmental Impact Report for the Bailey Extension (February 1999) as may be amended by CVRP Project Approvals and CVRP Project Subsequent Approvals.

1.3. CVRP Project Approvals. The term "CVRP Project Approvals" shall mean the project approvals for the approval, permitting, entitlement, development and operation of the CVRP Project and the Bailey Extension Project, including without limitation: the CVRP Project EIR certified by San Jose on October 24, 2000; the Development Agreement ("DA") between San Jose and CVRP approved by San Jose on November 7, 2000 and executed by CVRP on December 7, 2000 and by San Jose on January 17, 2001; the amendments to the Master Development Plan for the North Coyote Valley Campus Industrial Area approved by San Jose on October 24, 2000; the rezoning of the CVRP Project site to (A)PD Planned Development Zoning District approved by San Jose on November 7, 2000 ("Rezoning"); the Mitigation Monitoring and Reporting Program ("MMRP") approved by San Jose on October 24, 2000 in connection with the CVRP Project; all approvals and agreements related to the Bailey Extension Project; all approvals related to the formation of the Community Facilities District No. 5; the Land Transfer and Maintenance Agreement approved by San Jose on October 24, 2000 and by the Santa Clara Valley Water District; the Master Cooperation Agreement between CVRP and San Jose approved by San Jose on October 24, 2000; the

North Coyote Valley Incentive Zone adopted by San Jose on November 7, 2000; all approvals listed on Exhibit C to the Master Cooperation Agreement; and the appropriations ordinance and funding sources resolution amendments in the Water Utility Fund, Water Utility Capital Fund, and Treatment Plan Connection Fee Fund adopted by San Jose on November 7, 2000.

1.4. CVRP Project Subsequent Approvals. The term "CVRP Project Subsequent Approvals" shall mean: (1) all resource agency permits and additional approvals for the CVRP Project and/or Bailey Extension Project, including, but not limited to, any permits and approvals issued by the United States Fish and Wildlife Service, National Marine Fisheries Service, United States Army Corps of Engineers, Department of Safety of Dams, State and Regional Water Quality Control Boards, the California Department of Fish and Game, and Santa Clara Valley Water District; (2) any and all permits, approvals and entitlements issued in furtherance of this Agreement, the Master Cooperation Agreement or the approvals listed on Exhibit C to the Master Cooperation Agreement; (3) any subsequent approvals, permits and entitlements for the CVRP Project and the Bailey Extension Project including without limitation, subdivision improvement plans, final maps, tentative maps, building permits, construction agreements, planned development permits, grading permits, certificates of occupancy and all approvals listed on Exhibit D to the Master Cooperation Agreement; and (4) any amendments or modifications to any of the CVRP Project Approvals, and/or any of the

foregoing approvals, permits, entitlements, plans, maps, permits, agreements or certificates, consistent with the terms of this Agreement.

1.5. Salinas. The term "Salinas" shall mean the City of Salinas and its elected and appointed officials.

1.6. Hinder the CVRP Project. The phrase "hinder the CVRP Project" shall mean to directly or indirectly: (a) impair the development or use of the CVRP Project and/or the Bailey Extension Project as set forth in the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements (as defined in Section 1.9); (b) delay, change the process for issuance of, or otherwise interfere with, any CVRP Project Approvals, CVRP Project Subsequent Approvals or the Housing Site Entitlements (as defined in Section 1.9); or (c) increase the cost of processing, development, construction, ownership, occupancy, or operation, or adversely affect the timing of the development, occupancy and/or build-out, of the CVRP Project or the Bailey Extension Project.

1.7. Effective Date. This Agreement shall be effective as of the date when all of the following conditions have occurred: (a) Salinas' City Council has ratified and approved the terms of this Agreement; (b) San Jose's City Council has ratified and approved the terms of this Agreement; and (c) all of the signatories for all Parties as set forth below have signed the Agreement. Notwithstanding the foregoing, this Agreement shall not be effective unless all of the conditions set forth in this Section 1.7(a)-1.7(c), inclusive, have occurred on or before September 11, 2001.

1.8. Reserved Site. The term "Reserved Site" shall mean that a site consisting of between fifty (50) and seventy-five (75) acres located within the CVRP Project Site as selected by CVRP in its sole and absolute discretion.

1.9. Housing Site Entitlements. The term "Housing Site Entitlements" shall mean the General Plan Amendment and PD Zoning permitting residential use of a site in the vicinity of the CVRP Project as set forth more particularly in Section 2.2.1 of this Agreement and any subsequent PD Permits, subdivision improvement plans, final maps, tentative maps, building permits, condominium plans, grading permits, resource agency permits and certificates of occupancy related to or in furtherance of the General Plan Amendment and PD Zoning.

1.10. First Commercial Building Permit. The term "First Commercial Building Permit" shall mean the building permit issued by San Jose pursuant for the construction of a commercial building for the initial phase of the CVRP Project. The phrase "commercial building" shall mean any structure more than 50 percent of which is classified in the 1997 Uniform Building Code or 1998 California Building Code as Occupancy Group B (Business), Occupancy Group F (Factory and Industrial), Occupancy Group S-1 and S-2 (Storage), or Occupancy Group H-6 and H-7 (low grade Hazardous). Notwithstanding the foregoing, the phrase "commercial building" shall not include any fire station and/or infrastructure improvements to be constructed in connection with the CVRP Project.

2. LIMITATION ON DEVELOPMENT OF CVRP PROJECT.

2.1. Selection of Reserved Site. CVRP shall select and designate the Reserved Site within 180 days of the Effective Date of this Agreement.

2.2. Limitation. CVRP shall take no action to (a) develop more than five (5) million square feet of campus industrial development within the CVRP Project as set forth in to CVRP Project Approvals and CVRP Project Subsequent Approvals; or (b) use the Reserved Site for campus industrial development until such time as any one (1) of the following events occurs:

2.2.1. Approval of Entitlements Permitting Residential Use in Vicinity of Project. San Jose approves a General Plan Amendment and PD zoning permitting residential use of a site within the vicinity of the CVRP Project. The General Plan designation in the General Plan Amendment for such site shall be twenty-five (25) to forty (40) dwelling units per acre and shall permit the construction and development of approximately 2,000 to 3,000 dwelling units. The PD Zoning for such site shall be for the lesser of 2,000 to 3,000 dwelling units or the maximum number of dwelling units permitted by the General Plan Amendment if and as approved by San Jose and shall provide that twenty percent (20%) of the housing units shall be made affordable as determined by San Jose. Notwithstanding the foregoing, the agreements set forth in this Section 2.2.1 shall not commit San Jose to any particular course of action with respect to the approval of the General Plan Amendment or PD Zoning described above.

2.2.2. Commencement of Specific Plan Process for Central Coyote Urban Reserve. San Jose commences the process for preparing a Specific Plan permitting residential use in the Central Coyote Urban Reserve. Notwithstanding the foregoing, the agreements set forth in this Section 2.2.2 shall not commit San Jose to any particular course of action with respect to the Specific Plan for the Central Coyote Urban Reserve.

2.2.3. Issuance of Building Permits. San Jose issues building permits for 2000 housing units that are (a) within a ten-mile radius of the CVRP Project and (b) in addition to the housing sites identified in San Jose's General Plan as of October 24, 2000.

3. REGIONAL TRANSPORTATION.

3.1. Consulting Services. For a period of two (2) years ("Consultant Period"), CVRP shall pay for the services provided by a qualified consultant selected by Salinas to address regional transportation issues. Salinas shall be responsible for the development of the appropriate scope of work to be performed by the consultant. Notwithstanding the foregoing, CVRP shall not be obligated to expend funds in excess of Two Hundred Fifty Thousand and No/100 dollars (\$250,000.00) in retaining and paying the consultant pursuant to this Section 3.1. The Consultant Period shall begin to run sixty (60) days after issuance of the First Commercial Building Permit.

3.2. Consideration of Consultant Traffic Study. In the event that the consultant retained pursuant to Section 3.1 above prepares a regional traffic study and Salinas submits such study in connection with any project (as that term is defined in Section 21065 of the California Public Resources Code and Section 15378 of the CEQA Guidelines) under review by San Jose, San Jose shall consider and review the submitted regional traffic study in such manner as required by the California Environmental Quality Act, California Public Resources Code § 21000 et seq. Notwithstanding the foregoing, nothing in this Section 3.2 shall commit San Jose to any particular course of action with respect to its consideration of the regional traffic study or the project for which the regional traffic study has been submitted.

3.3. Endorsement of Caltrain Extension to Salinas. Upon presentation by Salinas to San Jose of a resolution from Transportation Authority of Monterey County endorsing the extension of Caltrain to Salinas, San Jose shall submit to the San Jose City Council, for its consideration, a resolution endorsing the extension of Caltrain to Salinas. San Jose staff shall recommend to the San Jose City Council that it adopt a resolution endorsing extension of Caltrain to Salinas. Notwithstanding the foregoing, nothing in this Section 3.3 shall commit the San Jose City Council to any particular course of action with respect to the endorsement of the extension of Caltrain to Salinas.

4. **NETWORKING ACADEMIES.**

4.1. Continued Support. Cisco, through the existing Cisco Networking Academy Program, shall continue to work with Salinas in connection with the continued development of local networking academies at Hartnell Community College and Mission Trails ROP with the goal of ensuring those local academies are operating at full capacity.

4.2. Contribution. CVRP shall contribute to Salinas the sum of Twenty Thousand and No/100 Dollars (\$20,000.00) to defray the cost of training instructors at Hartnell Community College or Mission Trails ROP in connection with Cisco Networking Academy Program.

5. **MONTEREY COUNTY AFFORDABLE HOUSING TRUST FUND.**

5.1. Amount of CVRP Contribution. CVRP shall contribute on a matching fund basis the sum of One Million and No/100 Dollars (\$1,000,000.00) to an affordable housing trust fund established for Monterey County ("Monterey County Affordable Housing Trust Fund") that is similar to the Silicon Valley Manufacturing Group's Affordable Housing Trust Fund.

5.2. Time of Contribution. Salinas shall have a period of three (3) years ("Matching Period") to obtain nonrevocable matching contributions for the Monterey County Affordable Housing Trust Fund in the amount of One Million and No/100 Dollars (\$1,000,000) ("Matching Funds"). Within ninety (90) days of CVRP's

receipt of appropriate evidence that Salinas has obtained the Matching Funds, CVRP shall make the contribution identified in Section 5.1. The Matching Period shall commence to run at the issuance of the First Commercial Building Permit.

5.3. Inability to Obtain Matching Funds. If after the expiration of the Matching Period, Salinas has been unable to obtain the full amount of the Matching Funds, then, within ninety (90) days of CVRP's receipt of appropriate evidence that Salinas has obtained some amount of Matching Funds, CVRP shall make a portion of the contribution identified in Section 5.1 in an amount equal to the amount of Matching Funds obtained by Salinas, provided however, that in no event shall the contribution made by CVRP be less than the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00). CVRP's obligation to provide Matching Funds shall terminate at the expiration of the Matching Period regardless of whether Salinas obtains additional Matching Funds after the expiration of the Matching Period.

5.4. Technical Assistance. San Jose and CVRP shall use their best efforts to cause the Silicon Valley Manufacturing Group to provide technical assistance to Salinas with respect to the formation of the Affordable Housing Trust Fund.

6. **DISMISSAL OF LITIGATION.** Within five (5) business days of the Effective Date of this Agreement, Salinas shall dismiss the Litigation with prejudice and shall notify the Court that it is withdrawing any and all papers filed by Salinas in connection with the Litigation.

7. **SETTLEMENT WITH COUNTY OF SANTA CRUZ.** If the total amount of monetary contributions being provided to the County of Santa Cruz by CVRP in connection with the settlement of the litigation encaptioned *County of Santa Cruz v. City of San Jose, City Council of the City of San Jose*, Santa Clara County Superior Court No. CV 794209 (the "Santa Cruz Litigation") is greater than the total amount of monetary contributions being provided by CVRP to Salinas pursuant to Sections 3.1, 4.2 and 5.1 of this Agreement, then CVRP shall increase the amount of monetary contributions being provided to Salinas pursuant to this Agreement so that the total amount of monetary contributions being provided to Salinas pursuant to this Agreement is equal to the total amount of the monetary contributions being provided to the County of Santa Cruz in connection with the settlement of the Santa Cruz Litigation.

8. **PAYMENT.** CVRP shall not be obligated to make any of the monetary contributions set forth above in Sections 3.1, 4.2, 5.1 and 7 of this Agreement until the issuance of the First Commercial Building Permit. Upon issuance of the First Commercial Building Permit, then CVRP shall make the contributions to Salinas required by Sections 3.1, 4.2, 5.1 and 7 as follows:

8.1.1. Consultant Services Contribution. Salinas shall be entitled to select the consultant retained pursuant to Section 3.1 within sixty (60) days after issuance of the First Commercial Building Permit upon such terms and conditions as are consistent with Section 3.1. Salinas shall forward the consultant's invoices for the

services rendered on a monthly basis and CVRP shall pay these invoices within thirty (30) days of receipt consistent with the terms of Section 3.1.

8.1.2. Network Academy Contribution. CVRP shall make the contribution to Salinas set forth in Section 4.2 of this Agreement within sixty (60) days after issuance of the First Commercial Building Permit.

8.1.3. Affordable Housing Trust Fund. Contribution. CVRP shall make the contribution set forth in Section 5.1 of this Agreement to the Monterey County Affordable Housing Trust Fund as is consistent with the terms of Sections 5.2 and 5.3, inclusive, of this Agreement.

8.1.4. Additional Consideration. CVRP shall make any additional contribution required by Section 7 of this Agreement within sixty (60) days of after the later to occur of (a) the issuance of the First Commercial Building Permit or (b) the execution of a written amendment to this Agreement identifying the type, nature and amount of any such additional contribution.

9. FUTURE CHALLENGES.

9.1. Restricted Activity Relating to CVRP Project and Bailey Extension Project. Except for the obligations set forth herein, Salinas agrees and covenants that it shall not itself, nor counsel others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate in (i) any administrative hearing, litigation or other action related in any way to any aspect of the approval, permitting, entitlement, development, construction or operation of the CVRP Project, the Bailey Extension

Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals, the Housing Site Entitlements, or otherwise hinder the CVRP Project, (ii) any legislation, initiative, referendum or moratorium which would in any way hinder the CVRP Project and/or affect, in any way, the approval, permitting, entitlement, development, construction, occupancy or operation of the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals; or the Housing Site Entitlements or (iv) any community meetings, proceedings or other events which have as a topic any form of opposition to the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals, or Housing Site Entitlements.

9.2. No Comments. Without the express written consent of San Jose and CVRP, Salinas shall not submit formal or informal, prepared or unprepared, oral or written comments, or testify in front of, or aid, encourage, assist or collaborate with (monetarily or otherwise) any other party in submitting oral or written comments to or testifying in front of, (i) any reviewing authority or agency, or (ii) any media entity or representative thereof, with respect to the CVRP Project, the Bailey Extension Project, or any of the CVRP Project Approvals, CVRP Project Subsequent Approvals or Housing Site Entitlements.

9.3. Release Relating to CVRP Project and Bailey Extension Project. Except for the obligations provided herein, Salinas hereby unconditionally releases, remises, acquits and forever discharges CVRP and San Jose, and each of their

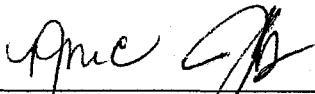
respective representatives, attorneys, employees, agents, heirs, officers, directors, successors and assigns, members, affiliates, partners, joint venturers, subsidiaries, parents, receivers, trustees and shareholders (collectively, "Released Parties") from claims or causes of action, including any and all administrative or judicial hearings or appeals, or any other litigation in a court of law, either at law or in equity, of any kind, nature and description, presently known or unknown and whether presently existent or nonexistent, or any legislation, initiative, referendum or moratorium, that would hinder the CVRP Project and/or affect, in any way, the approval, permitting, entitlement, development, occupancy or operation of the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals or Housing Site Entitlements which Salinas has had, now has or may have in the future against San Jose or CVRP or their respective Released Parties.

9.4. Waiver of California Civil Code Section 1542. Salinas agrees that the release contained in Section 9.3 extends to all claims of any kind or nature, whether known or unknown, suspected or unsuspected, and in that regard Salinas acknowledges that it has read, been advised by counsel concerning, and considered and understand the full nature, extent and import of the provisions of Section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Salinas further declares that it knowingly and willingly enters into this Agreement notwithstanding the provisions of Section 1542 of the Civil Code of California. Salinas, upon the advice of counsel, waives and relinquishes, now and forever, any and all rights that it now has or may have in the future under Section 1542 to the fullest extent allowed by law. Salinas agrees and represents that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of action or liabilities, known or unknown, heretofore and hereafter arising in connection with the subject matter of this Agreement.

Salinas hereby expressly, knowingly, and voluntarily waives and relinquishes any and all rights and benefits that it may have under California Civil Code Section 1542 with respect to the actions identified in Section 9.3.



City of Salinas Initials

10. **PUBLIC SUPPORT.** Salinas agrees to participate, at CVRP's or San Jose's request, in public hearings, press conferences and other public forums supporting the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements and to provide, at CVRP's or San Jose's request, written comments to public agencies and

others supporting the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements. If requested by CVRP or San Jose, Salinas shall provide a draft of any written comments supporting the CVRP Project, the Bailey Extension Project, the CVRP Project Approvals, the CVRP Project Subsequent Approvals and/or the Housing Site Entitlements to CVRP and San Jose for their respective review and comment prior to Salinas' submission of said comments. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. ASSISTANCE WITH SETTLEMENT OF AMBAG

LITIGATION. Salinas shall use its best efforts to cause the AMBAG to enter into a settlement of the AMBAG Litigation on terms that are acceptable to San Jose and CVRP, in their respective sole and absolute discretion.

12. REMEDIES.

12.1. Available Remedies in the Event of Breach. The Parties agree that, in the event of a default under this Agreement by any Party, the sole and exclusive remedies available to the other Parties shall be (a) to enforce by specific performance the obligations hereunder of the defaulting Party or (b) to exercise any other remedies specifically set forth herein. No Party shall be required or compelled to take any action, or refrain from taking any action, other than those actions expressly identified in this Agreement.

12.2. Remedies of San Jose and CVRP in the Event of Breach by Salinas.

12.3. Termination of Obligations. Salinas' breach of the obligations set forth in this Agreement shall terminate San Jose's and CVRP's obligations as set forth in this Agreement.

12.4. Corrective Actions Related to Petitioners' Breach of Section 9.2. In the event of Salinas' breach of the obligations set forth in Section 9.2, Salinas shall within five (5) business days of its receipt of notice from San Jose and/or CVRP that Salinas has breached Section 9.2: (a) unqualifiedly withdraw in writing, with a copy to CVRP and San Jose, any comments submitted to any person or entity in violation of this Agreement; and/or (b) if the nature or the forum of the comments submitted in violation of this Agreement are such that they cannot be withdrawn, submit to the same person or entity, written comments, with a copy to CVRP and San Jose, the content of which refute the contents of the comments that violated this Agreement. CVRP and San Jose shall have the right to submit copies of such withdrawals/counter comments to the media, public officials or any other person or entity deemed by CVRP and San Jose, in their respective sole and absolute discretion, to be necessary to mitigate the damage caused by the breach.

12.5. Survival of Releases. Sections 9.1 through 9.4, inclusive, shall survive the expiration or earlier termination of this Agreement.

12.6. Enforcement Procedure. As set forth in the Final Order of the Superior Court of the State of California In and For the County of Santa Clara ("Court") set forth in Exhibit A attached hereto, it is the intent of the Parties that the Court in the Litigation retain jurisdiction for the sole purpose of resolving any disputes between the Parties as to the enforcement or interpretation of this Agreement and such continuing jurisdiction shall not include any other matters. Any dispute regarding the enforcement or interpretation of this Agreement shall occur pursuant to the following procedure:

12.6.1. Notice of Breach. Within ten (10) business days of its determination that another Party has breached the provisions of this Agreement, a Party shall notify all other Parties and their counsel of this determination in writing and provide a written explanation of the basis of its determination.

12.6.2. Response to Notice of Breach. Within ten (10) business days of their receipt of the notice set forth in Section 12.6.1, the Parties receiving said notice shall provide a written response to the notifying Party indicating its concurrence with, or rejection of, the determination of breach, or indicating that the alleged breach has no bearing on that Party's obligations under this Agreement, as the case may be.

12.6.3. Meet and Confer Obligation. Should the Parties disagree with respect to the determination of breach of this Agreement, or the remedy necessary to cure any alleged breach, then within fifteen (15) days of the receipt by the

Party claiming the breach of all responses by the other Parties, or other mutually agreeable date, the Parties shall meet and confer in good faith in an attempt to resolve any differences.

12.6.4. Court Resolution of Breaches. In the event that the dispute is not resolved, then the Party claiming the breach shall be entitled immediately to seek relief exclusively from the Superior Court in the County of Santa Clara. Any action taken to resolve a dispute between the Parties with respect to the enforcement or interpretation of this Agreement shall be taken by motion or other appropriate pleading. The Court's power to remedy any breach of this Agreement shall be expressly governed and limited by Section 12.1 of this Agreement.

13. MISCELLANEOUS PROVISIONS.

13.1. No Prior Assignments. The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, firm or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

13.2. Binding on Successors. This Agreement and its terms shall inure to the benefit of and be binding upon each of the Parties hereto and each and all of their respective successors, assignees, buyers, grantees, vendees, or transferees, and their past or present, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, representatives, receivers, trustees, officers, directors, employees, agents, shareholders

and elected and appointed officials and each of them, as though they were Parties hereto, wherever located. Salinas shall not have the right to transfer or assign any rights or obligations under this Agreement, voluntarily, involuntarily, or by operation of law without the express written consent of CVRP and San Jose, which may be withheld in CVRP's and San Jose's respective sole and absolute discretion.

13.3. Settlement of Disputed Claims. The Parties hereto understand and agree that this settlement is a compromise of disputed claims, and that no Party's actions under this Agreement shall be construed as an admission of liability with respect to Litigation.

13.4. Entire Agreement. This writing constitutes the entire agreement among the Parties, and no modification of this Agreement shall be valid unless executed in writing by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

13.5. Factual Investigation. Each Party has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know

or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement.

13.6. Agreement May Be Pleaded as a Defense. In connection with any demand or cause of action related to a matter released in Sections 10.1 through 10.5, inclusive, this Agreement may be pleaded as a defense by the Parties hereto and shall operate to effect a dismissal of such demand or cause of action.

13.7. Captions. The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

13.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.9. Severability. If any terms or provisions of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or unenforceability would deprive any Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the Parties shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually

acceptable to the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void, or unenforceable, the Party disadvantaged by the invalidation or voiding of this Agreement may terminate this Agreement by providing written notice of such termination to the other Parties.

13.10. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between the Parties shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of the Parties indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 13.10.

San Jose: Darrell Dearborn
City Manager's Office
801 N. First St., Room 436
San Jose, CA 95110
Facsimile: (408) 277-3131

With copies to: Richard Doyle
City Attorney
City of San Jose
151 Mission Street
San Jose, California 95110
Facsimile: (408) 277-3159

CVRP: Mr. David Taran
Mr. Stuart Shiff
Coyote Valley Research Park, LLC
150 Almaden Blvd.
Suite 700
San Jose, California 95113
Facsimile: (408) 293-9600

With copies to: Ellen Jamason
Senior Director, Real Estate & Facilities
Cisco Systems, Inc.
170 West Tasman Drive
Building 8
San Jose, CA 95134-1706
Facsimile: (408) 526-4830

Mr. Stephen G. Speno
President
Gibson Speno Companies
60 S. Market Street, Suite 1120
San Jose, CA 95113
Facsimile: (408) 278-6868

Margo N. Bradish, Esq.
Brobeck, Phleger & Harrison LLP
One Market
Spear Tower
San Francisco, CA 94105
Facsimile: (415) 442-1010

Salinas: David Mora
City Manager' s Office
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639
Facsimile: (831) 758-7256

With copies to:

James C. Sanchez
Salinas City Attorney's Office
City of Salinas
200 Lincoln Avenue
Salinas, California 93901-2639
Facsimile: (831) 758-7256

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent, or (b) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by nationally recognized overnight courier service (such as Federal Express) as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a "hard" copy is delivered by overnight courier as provided above.

13.11. Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same

agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

13.12. Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

13.13. Authority. The persons signing below represent that they have the authority to bind their respective Party and that all necessary board of directors', shareholders' or City Council's or other approvals have been obtained.

13.14. Understanding of Terms. The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants, as they may have desired prior to executing this Agreement.

13.15. Construction. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the

effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

13.16. Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set forth herein in full.

13.17. No Third Party Beneficiaries. The Parties agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

13.18. No Requirement to Build. The Parties hereto agree that, notwithstanding anything to the contrary herein, this Agreement shall not obligate CVRP or San Jose to undertake all or any part of the CVRP Project or the Bailey Extension Project.

13.19. No Further Payments. No Party hereto shall be required to pay, or be responsible for the payment of, any sum, cost or expense, except as expressly provided by this Agreement.

13.20. Further Assurances. The Parties shall promptly perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all acts, deeds and assurances, including the delivery of any documents, as either Party may reasonably require in order to carry out the intent and purpose of this Agreement.

13.21. Termination. If CVRP, in its sole and absolute discretion, notifies the other Parties, in writing, (a) that any CVRP Project Approval or CVRP Project Subsequent Project Approval is disapproved or is approved on terms not

acceptable to CVRP in its sole and absolute discretion, or (b) that CVRP has decided not to commence construction of any new buildings in the CVRP Project, or (c) that any CVRP Project Approval or CVRP Project Subsequent Approval has been suspended, stayed, restrained, invalidated or voided as a result of any litigation, legislation, referendum or other reason, then this Agreement shall automatically terminate as of the date of such notice.

13.22. Announcement of Settlement. The Parties hereto shall work in good faith and cooperatively to announce the execution of this Settlement Agreement at a press conference or other public forum at the time of execution of the Agreement. In such announcement, the Parties hereto shall commend one another for their respective leadership and commitment to forging a regional collaborative for smart growth regional planning in San Jose and the adjoining communities including Salinas. Salinas shall state its support for the CVRP Project and Bailey Extension Project.

IN WITNESS WHEREOF, the Parties hereto have executed one or more
copies of this Agreement as of the date first set forth above.

Date: ~~August~~ __, 2001
September

**COYOTE VALLEY RESEARCH
PARK, LLC,**
a Delaware limited liability company

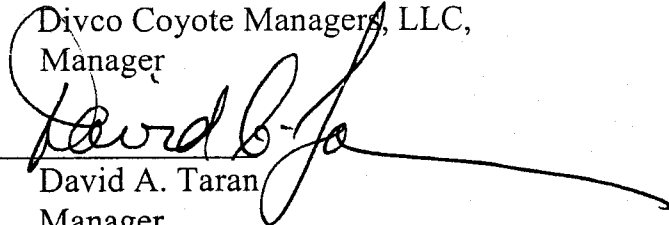
By: Coyote Valley Properties, LLC,
a Delaware limited liability
company

Its: Manager

By: Coyote Valley Managers, LLC, a
Delaware corporation

Its: Manager

By: Divco Coyote Managers, LLC,
Its: Manager

By: 
David A. Taran
Manager

Date: August __, 2001

CITY OF SAN JOSE

By: Ron Gonzales

Name: Ron Gonzales

Title: Mayor

September
Date: August 28, 2001

CITY OF SALINAS

By: Anna M. Caballero

Name: Anna Caballero

Title: Mayor

APPROVED AS TO FORM:

Dated: August __, 2001

BROBECK, PHLEGER & HARRISON
LLP

By: Rollin B. Chippey, II

Rollin B. Chippey, II

Attorneys for COYOTE VALLEY
RESEARCH PARK, LLC

Dated: Sept - 13, 2001

OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SAN JOSE

By: Joseph DiCiuccio

Joseph DiCiuccio

Attorneys for CITY OF SAN JOSE

Dated: ^{September}~~August~~ 28, 2001

OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SALINAS

By: 

James C. Sanchez

Attorneys for CITY OF SALINAS

EXHIBIT A

FINAL ORDER OF COURT

ROLLIN B. CHIPPEY State Bar No.: 107941
BROBECK, PHLEGER & HARRISON LLP
Spear Street Tower
One Market
San Francisco, California 94105
Telephone: (415) 442-0900
Facsimile: (415) 442-1010

Attorneys for Real Parties In Interest
COYOTE VALLEY RESEARCH PARK, LLC;
GIBSON SPENO, LLC; DIVCOWEST PROPERTIES, LLC;
CISCO SYSTEMS, INC.; and ROBERT WEYHE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CITY OF SALINAS, a charter city,

Petitioner and Plaintiff,

v.

CITY OF SAN JOSE, a charter city, CITY
COUNCIL OF THE CITY OF SAN JOSE,
the governing body of the City of San Jose,
and DOES I through X, inclusive,

COYOTE VALLEY RESEARCH PARK,
LLC; GIBSON SPENO, LLC; DIVCOWEST
PROPERTIES, LLC; CISCO SYSTEMS,
INC., ROBERT WEYHE, and DOES 1
through 50, inclusive,,

Real Parties in Interest,

Case No. CV 794212

**STIPULATED JUDGMENT
ENTERED PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE SECTION 664.6**

Action Filed: November 28, 2000
Trial Date: Not Yet Established

Plaintiff and Petitioner City of Salinas (hereinafter referred to as "Salinas"), Defendants and Respondents City of San Jose and City Council of City of San Jose (hereinafter referred to as "San Jose"), and Real Parties in Interest Coyote Valley Research Park LLC, Cisco Systems, Inc., DivcoWest Properties, Gibson Speno LLC, and Robert Weyhe (hereinafter referred to as "CVRP"), (collectively, the "Parties"), through their counsel of record, hereby agree and stipulate as follows:

FACTUAL BACKGROUND

H. WHEREAS, on or about October 24, 2000 and November 7, 2000, City Council of San Jose considered and approved land use entitlements relating to Coyote Valley Research Park. Pursuant to such project approvals, Coyote Valley Research Park anticipates the development of an approximately 688-gross acre site with approximately 385 net acres of office/research and development/assembly and light manufacturing uses. Construction of building space would total up to 6.6 million square feet. Specifically, the City Council of San Jose made the following determinations: (1) the project will have a significant effect on the environment, (2) an environmental impact report was prepared and certified for the project pursuant to the provisions of the California Environmental Quality Act, California Public Resources Code §21000 et. seq. ("CEQA"), (3) mitigation measures were made a condition of approval of the project, and (4) a statement of overriding considerations was adopted for the project. On the same date, the City Council of San Jose approved various infrastructure agreements with the CVRP.

- I. WHEREAS, on or about November 27, 2000, Salinas commenced the above-captioned action relating to the project pursuant to the California Environmental Quality Act, Public Resources Code § 21000 et seq. (the "Litigation").
- J. By way of summary, the Litigation seek a writ of mandate pursuant to California Code of Civil Procedure ("C.C.P.") §§1085 and 1094.5, and for declaratory and injunctive relief pursuant to C.C.P. §§526, 527 and 1060 and Civil Code §3422, setting aside land use approvals issued by San Jose allowing development of the Project.
- K. WHEREAS, pursuant to the provisions of CEQA, Salinas, San Jose, and CVRP have been engaged in discussions in an effort to resolve the Litigation.
- L. WHEREAS, as set forth more fully below, the Parties hereto desire to fully settle, compromise, and resolve the Litigation and any disputes and controversies relating to the CVRP Project Following extensive settlement discussions and negotiations, the Parties have agreed to a settlement, the terms and conditions of which are set forth in Exhibit A hereto and which constitute the mutual understandings of the Parties.
- M. WHEREAS Salinas, San Jose and CVRP have each consulted with legal counsel regarding this Stipulated Judgment set forth herein and are fully aware of its legal effect.

STIPULATION

Salinas, San Jose and CVRP, through their counsel of record, agree and stipulate as follows:

1. Pursuant to section 664.6 of the California Code of Civil Procedure, the above-captioned matter shall be and is hereby dismissed with prejudice.
2. Pursuant to section 664.6 of the California Code of Civil Procedure, Salinas, San Jose and CVRP hereby request that the Court retain jurisdiction over Salinas, San Jose and CVRP to enforce the terms of the Settlement Agreement until performance in full of all terms of the Settlement Agreement has been completed. Salinas, San Jose and CVRP consent to the Court's retention of jurisdiction to enforce the terms of the Settlement Agreement.
3. Salinas, San Jose and CVRP shall each bear their own costs.

Dated: September 13, 2001

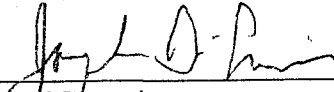
BROBECK, PHLEGER & HARRISON
LLP

By: _____
Rollin B. Chippey, II

Attorneys for Real Parties in Interest
COYOTE VALLEY RESEARCH PARK,
LLC, CISCO SYSTEMS, INC.,
DIVCOWEST PROPERTIES, GIBSON
SPENO LLC and ROBERT WEYHE

Dated: September 13, 2001

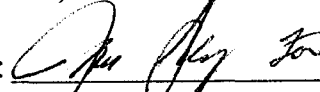
OFFICE OF THE CITY ATTORNEY OF
THE CITY OF SAN JOSE

By: 
Joseph DiCiuccio

Attorneys for Respondents CITY OF SAN
JOSE and CITY COUNCIL OF CITY OF
SAN JOSE

~~Dated: September 13, 2001~~
October 1

REMY, THOMAS & MOOSE, LLP

By: 
James G. Moose

Attorneys for Petitioner CITY OF
SALINAS

ORDER

The above provisions and stipulations are hereby adopted as an Order of this Court

DATED: September __ 2001

Leslie C. Nichols
Judge of the Superior Court